

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE SENATE

SENATE BILL NO. 1205

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2004, IDAHO CODE, TO DEFINE A TERM AND TO REVISE A DEFINITION; AND AMENDING SECTION 54-2018, IDAHO CODE, TO CLARIFY A TIME ZONE AND TO CLARIFY A PERIOD OF TIME.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2004, Idaho Code, be, and the same is hereby amended to read as follows:

54-2004. DEFINITIONS. As used in this chapter:

(1) "Accredited college or university" means an institution accredited by the regional accrediting associations, as reported in the most current publication of the accredited institutions of postsecondary education.

(2) "Acting in this state" means and includes dealing with any interest in real property, or a business opportunity involving an interest in real property, that is situated in the state of Idaho, or conducting or attempting to conduct or solicit real estate business with residents of the state of Idaho.

(3) "Active license" means the status of a real estate license that has not been inactivated, expired, terminated, suspended or revoked.

(4) "Associate broker" means an individual who has qualified personally as a real estate broker in Idaho under this chapter, but is licensed under, associated with and represents a designated broker in the performance of any act described in subsection (35) of this section.

(5) "Branch office" means an office operated by a licensed real estate broker or licensed legal business entity, separate and apart from the main office. A branch office may be licensed or unlicensed, in accordance with this chapter.

(6) "Broker price opinion" means a written price opinion of the estimated price for identified real property prepared or rendered by an actively licensed broker or associate broker, for a purpose other than a prospective listing or sale, and that complies or purports to comply with the requirements and content provision of section 54-4105, Idaho Code.

(7) "Brokerage company" means a real estate business, whether a sole proprietorship, a legal entity, or any other licensed person engaged in acts requiring a real estate license in Idaho, and which is conducting or holding itself out as conducting the business of real estate through a designated broker.

(8) "Brokerage representation agreement" means a written contract between a buyer, seller, or both, and a real estate brokerage for agency representation in a regulated real estate transaction.

(9) "Business conduct and office operations course" means, in reference to a real estate course offering, the component of the advanced real

1 estate course that is required in order to obtain a broker license and that
 2 teaches business practices and office operations of the brokerage, includ-
 3 ing recordkeeping, trust account procedures and the laws governing those
 4 practices.

5 (10) "Business day" means and includes each day of the week except Sat-
 6 urday, Sunday or any other legal holiday enumerated in section 73-108, Idaho
 7 Code.

8 (11) "Business name" means the name in which the brokerage company is
 9 licensed by the commission.

10 (12) "Business opportunity" means and includes an established busi-
 11 ness, good will of an established business, or any interest therein, or any
 12 one (1) or combination thereof, where a sale or transfer of an interest in
 13 land including, but not limited to, an assignment of a lease, is involved in
 14 the transaction.

15 (13) "Commission" means the Idaho real estate commission, unless the
 16 context clearly indicates a different meaning.

17 (14) "Commission core course" means, in reference to a real estate
 18 course offering, the course containing curriculum, identified by the com-
 19 mission, that stresses current trends in real estate practices and changes
 20 in laws in real estate related industries. A core course must contain no more
 21 than four (4) classroom hours of instruction.

22 (15) "Continuing education elective course" means a real estate course
 23 offering, other than the commission core course for which continuing educa-
 24 tion credit hours may be obtained as provided in section 54-2023, Idaho Code.

25 (16) "Convicted" means a plea of nolo contendere or guilty, a jury ver-
 26 dict of guilty or a court decision of guilt whether or not a judgment or sen-
 27 tence has been imposed, withheld or suspended.

28 (17) "Cooperative sale" means a transaction involving two (2) or more
 29 brokers.

30 (18) "Council" means the Idaho real estate education council.

31 (19) "Dealer in options" means any person, firm, partnership, associ-
 32 ation or corporation who shall directly or indirectly take, obtain or use
 33 options to purchase, exchange, lease option or lease purchase real property
 34 or any interest therein for another or others whether or not the options
 35 shall be in his or its name and whether or not title to the property shall pass
 36 through the name of the person, firm, partnership, association or corpora-
 37 tion in connection with the purchase, sale, exchange, lease option or lease
 38 purchase of the real property, or interest therein.

39 (20) "Designated broker" means an individual who is licensed as a real
 40 estate broker in Idaho and who is designated by the brokerage company to be
 41 responsible for the supervision of the brokerage company and the activities
 42 of any associated licensees in accordance with this chapter.

43 (21) "Distance learning course" means, in relation to a real estate
 44 course offering, a real estate course that is delivered, not as a live
 45 course, but through a medium in which the instructor and student are sepa-
 46 rated by both distance and time.

47 (22) "Double contract" means two (2) or more written or unwritten con-
 48 tracts of sale, purchase and sale agreements, loan applications, or any
 49 other agreements, one (1) of which is not made known to the prospective loan
 50 underwriter or the loan guarantor, to enable the buyer to obtain a larger

1 loan than the true sales price would allow, or to enable the buyer to qual-
 2 ify for a loan which he or she otherwise could not obtain. An agreement or
 3 loan application is not made known unless it is disclosed in writing to the
 4 prospective loan underwriter or loan guarantor.

5 (23) "Executive director" means the executive director of the Idaho
 6 real estate commission.

7 (24) "Expired license" means the status of a license when the license
 8 period has expired and the license is not renewed or provisional license
 9 granted, and before the license is terminated.

10 (25) "Fee or commission" means a payment, actual, promised or expected,
 11 as compensation for the performance of any act requiring a real estate li-
 12 cense.

13 (26) "Inactive license" means the status of a license that is not ex-
 14 pired, terminated, suspended or revoked, and during which inactive period
 15 the license holder is not authorized to act as or associate with a designated
 16 broker.

17 (27) "Legal business entity" means and includes any type of corpora-
 18 tion, partnership, limited liability company or limited liability partner-
 19 ship, a governmental entity, trust or other entity capable of conducting
 20 business.

21 (28) "Licensee" means any person who is licensed in accordance with this
 22 chapter to engage in the business or act in the capacity of real estate bro-
 23 ker, associate broker or real estate salesperson.

24 (29) "Limited broker" means a broker individually qualified to do busi-
 25 ness in Idaho, but who may not have associate brokers or salespersons li-
 26 censed with that broker.

27 (30) "Live presentation" means, in reference to a real estate course of-
 28 fering, a real estate course that is personally presented by the instructor
 29 and personally attended by the student at the same facility, or, if separated
 30 by distance, the instructor and student are connected by contemporaneous,
 31 two-way audio and visual communication.

32 (31) "Main office" means the principal location where the real estate
 33 broker is licensed to transact business.

34 (32) "Person" means and includes an individual, or any legal business
 35 entity.

36 (33) "Primary Idaho license" means an Idaho real estate license that is
 37 not contingent upon continuance of a license in another state or jurisdic-
 38 tion.

39 (34) "Provisional license" means an extension of the period of active
 40 licensure, beyond the licensee's expiration date, granted by the commission
 41 for the purpose of allowing the licensee to complete the continuing educa-
 42 tion requirements set forth in section 54-2023, Idaho Code, or for any other
 43 purpose allowed by this chapter.

44 (35) "Real estate broker" means and includes:

45 (a) Any person other than a real estate salesperson, who, directly or
 46 indirectly, while acting for another, for compensation or a promise or
 47 an expectation thereof, engages in any of the following: sells, lists,
 48 buys, or negotiates, or offers to sell, list, buy or negotiate the pur-
 49 chase, sale, option or exchange of real estate or any interest therein
 50 or business opportunity or interest therein for others;

(b) Any actively licensed broker while, directly or indirectly, acting on the broker's own behalf;

(c) Any person who represents to the public that the person is engaged in any of the above activities;

(d) Any person who directly or indirectly engages in, directs, or takes any part in the procuring of prospects, or in the negotiating or closing of any transaction which does or is calculated to result in any of the acts above set forth;

(e) A dealer in options as defined in this section.

(36) "Real estate salesperson" or "salesperson" means any person who has qualified and is licensed as a real estate salesperson in Idaho under this chapter, and is licensed under, associated with, and represents a designated broker in the performance of any act described in subsection (35) of this section.

(37) "Real estate settlement procedures act" means the real estate settlement procedures act of 1974, as amended, 12 U.S.C. section 2601 et seq., and as in effect on January 1, 2008.

(38) "Regular employee" means an individual who performs a service for wages or other compensation and whose employer withholds federal employment taxes under a contract of hire, written or oral, express or implied.

(39) "Regulated real estate transaction" means those real estate transactions for which a real estate license is required under chapter 20, title 54, Idaho Code.

~~(3940)~~ "Responsible broker" means the designated broker in the regulated real estate transaction who is responsible for the accounting and transaction files for the transaction, in the manner described in section 54-2048, Idaho Code.

~~(401)~~ "Revoked license" means a license that has been permanently revoked by the issuing authority.

~~(412)~~ "Sales associate" means a salesperson or an associate broker licensed under and associated with a designated broker.

~~(423)~~ "State or jurisdiction" means and includes any ~~of the fifty (50) states or territory of the United States, the District of Columbia and any foreign jurisdiction country that issues~~ real estate licenses substantially similar to those provided for in this chapter.

~~(434)~~ "Successfully completed" means, in reference to a real estate course offering, completing all required course hours and, except where the licensee seeks continuing education credit for having regularly attended the live presentation of a course, passing a commission-approved final examination.

~~(445)~~ "Surrendered license" means a license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.

~~(456)~~ "Suspended license" means a license that has been temporarily suspended by the issuing authority.

SECTION 2. That Section 54-2018, Idaho Code, be, and the same is hereby amended to read as follows:

54-2018. LICENSE RENEWALS -- INACTIVE LICENSE STATUS -- PERSONAL CHANGES -- EFFECTIVE DATES -- FEES NONREFUNDABLE. (1) Initial license period. Each new license shall be for a period of one (1) year plus the months up to and including the next birth date of the licensee, not to exceed a period of two (2) years, and shall expire on the last day of the month of the birth date of the licensee. A salesperson licensed in this state who applies for and obtains a broker license shall retain the license renewal period and expiration date of his salesperson license. Corporations, partnerships, limited liability companies and other entities defined as "persons" in this chapter shall have established as the equivalent of a birth date, the birth date of its designated broker. Licensed branch offices shall have established as the equivalent of a birth date, the birth date of the designated broker for the branch office.

(2) License renewal. Each license shall be renewable for a period of two (2) years by timely submitting a completed application. Applications must be received at the commission office on or before 5 p.m., mountain standard time, of the expiration date.

(a) If renewing an active license, the application shall include:

(i) Certification that the applicant has met the commission's continuing education requirements as set forth in section 54-2023, Idaho Code;

(ii) Certification that the applicant has met the mandatory errors and omissions insurance requirement for real estate licensees as set forth in section 54-2013, Idaho Code; and

(iii) Payment of all renewal fees established by this chapter or by the commission.

(b) If renewing an inactive license, the application shall include payment of all renewal fees established by this chapter or by the commission by rule.

(3) Late renewal. If the licensee fails to submit a completed application for renewal or pay the renewal fee on or before the expiration date, the commission may accept a later application or payment of the fee, subject to such conditions as the commission may require including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of renewal of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful for any licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions of real estate broker or real estate salesperson in section 54-2004, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not renewed within one (1) year of the expiration date shall be automatically terminated by the commission and may not be renewed.

(4) Active and inactive license status. A licensee who is a designated broker or associated with a designated broker shall hold an active license. A licensee who has paid all applicable fees, who is not associated with a designated broker and who holds a current license that is not revoked, suspended or terminated shall hold his license on inactive status. A licensee seeking to change from active license status to inactive license status shall have the broker submit a change of status application to the commission in the form and manner approved by the commission. During the period that his li-

1 cense is inactive, the licensee shall not engage in the business or act in the
 2 capacity of real estate broker, associate broker or salesperson. However,
 3 an inactive licensee may receive a referral fee for any referral made during
 4 the period his license was active. A licensee may activate an inactive li-
 5 cense by meeting each of the following:

6 (a) If activating as a sales associate, associating with a designated
 7 Idaho broker and having the broker submit an application in the form and
 8 manner approved by the commission;

9 (b) If activating as a designated broker, establishing an office in the
 10 manner required by this chapter and submitting an application in the
 11 form and manner approved by the commission;

12 (c) Paying any required fees;

13 (d) Obtaining and maintaining a policy of errors and omissions insur-
 14 ance as required by section 54-2013, Idaho Code, and in accordance with
 15 the rules of the commission and certifying the same; and

16 (e) Successfully completing any continuing education requirements, as
 17 prescribed in section 54-2023, Idaho Code, and certifying the same for
 18 the current license period.

19 (5) Continuing education. A licensee shall not submit an application
 20 to renew a license on active status or to activate an inactive license with-
 21 out having obtained the continuing education credit hours required by sec-
 22 tion 54-2023, Idaho Code. A licensee who violates this subsection (5) shall
 23 be subject to disciplinary action by the commission.

24 (6) Time required. The commission may request satisfactory proof of
 25 continuing education compliance from any licensee who has certified to the
 26 commission that he has completed the requirement. The request shall state
 27 the time within which the proof must be received at the commission office,
 28 which time shall not be less than ten (10) business days.

29 (7) Satisfactory proof. Upon request from the commission, the licensee
 30 shall submit satisfactory proof of having met the continuing education re-
 31 quirement set forth in section 54-2023, Idaho Code. "Satisfactory proof"
 32 shall, for each course, consist of documentation:

33 (a) Identifying the licensee, the title of the course or challenge
 34 exam, the course certification number, the course provider, the number
 35 of classroom hours, the completion date of the course or challenge exam,
 36 and including:

37 (i) A transcript of the course taken;

38 (ii) A letter from the provider verifying successful completion
 39 of the course; or

40 (iii) A course completion certificate; and

41 (b) Identifying the course certification approval number to establish
 42 that the course is approved for continuing education credit as provided
 43 by section 54-2023, Idaho Code. The commission may, in its sole discre-
 44 tion, accept alternative documentation establishing that the course is
 45 approved for credit.

46 (8) Failure to submit proof. A licensee failing to submit satisfac-
 47 tory proof of completing the continuing education requirement after being
 48 requested to do so by the commission may have his license inactivated by the
 49 commission and shall not be entitled to reactivate the license unless and un-
 50 til he provides to the commission satisfactory proof that he meets the con-

1 continuing education requirements of section 54-2023, Idaho Code. Nothing in
2 this section shall limit the ability of the commission to investigate or dis-
3 cipline a licensee for violating subsection (5) of this section or for vio-
4 lating any other section of this chapter.

5 (9) Change in personal information. An individual licensee, whether
6 active or inactive, shall provide written notice to the commission, in the
7 form and manner approved by the commission, of any change of his personal
8 name, address of personal residence or personal telephone number. Notice
9 shall be provided within ten (10) business days of the change. If the li-
10 censee has changed his personal name, he shall also submit legal proof of the
11 change and, if an active licensee, he shall have the broker submit the writ-
12 ten notice of change to the commission.

13 (10) Issuance of the license and effective date. A real estate license
14 shall be deemed issued, and any requested license changes shall become ef-
15 fective, when the completed application, attachments, and any required fees
16 are received at and approved by the commission. An application that is in-
17 complete or lacking the required fees shall be returned to the applicant and
18 no license shall be issued until a completed application and all required
19 fees are received at and actually approved by the commission. A brokerage is
20 not required to obtain, display or possess a physical license certificate as
21 evidence of the individual's active licensure; however, the commission may
22 make license certificates available for a fee as authorized by this chapter.
23 A brokerage shall not display or otherwise make available to the public a li-
24 cense certificate for any individual who does not hold an active license with
25 the brokerage.

26 (11) Fees nonrefundable. No licensee shall be entitled to a refund of
27 any fee after the license or license change has become effective.